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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BOSTON SCIENTIFIC CORPORATION, a
Delaware Corporation, BOSTON
SCIENTIFIC SCIMED, INC., a Minnesota
Corporation, and FORTIS ADVISORS LLC,
as Securityholder Representative for the
Former Securityholders of nVision Medical
Corporation, a Delaware Corporation,

Plaintiffs,

vs.

BIOCARDIA, INC., a Delaware Corporation

Defendant.

BIOCARDIA, INC.,

Counterclaimant,

vs.

BOSTON SCIENTIFIC CORPORATION,
BOSTON SCIENTIFIC SCIMED, INC.,
FORTIS ADVISORS LLC, AND SURBHI
SARNA,

Counterdefendants.

Case No.: 3:19-cv-05645-VC

**SECOND JOINT CASE MANAGEMENT
STATEMENT**

JURY TRIAL DEMANDED

Hon. Vince Chhabria
July 8, 2020
10:00 am
Courtroom 4
17th Floor

Pursuant to Civil Local Rule 16-10(d), the plaintiffs and counterdefendants Boston Scientific Corporation and Boston Scientific Scimed, Inc. (collectively, “Boston Scientific”), the plaintiff and counterdefendant Fortis Advisors, LLC (“Fortis”), the defendant and counterclaimant Biocardia, Inc. (“BioCardia”), and the counterdefendant Surbhi Sarna submit this Joint Case Management Statement in anticipation of the Case Management Conference scheduled for July 8, 2020 to report the progress that has been made since the parties’ last Case Management Statement was filed and to make proposals for the remainder of the case development process.

1. Overall Case Status

On May 8, 2020 the Court issued an order tolling all deadlines in the scheduling order until the case management conference on July 8, 2020. The parties have nevertheless completed an initial mediation and have continued to make progress on discovery, though discovery efforts have been hampered by the COVID-19 pandemic, which has impacted a number of aspects of this case, including the taking of depositions. In addition, there are a number of important motions pending, as outlined below, that will impact the scope of discovery and overall case management. Among the pending motions is BioCardia’s motion to consolidate this case with Case No. 3:20-cv-02829 (“the nVision Case”). The counterdefendants oppose BioCardia’s motion to consolidate, at least until resolution of whether BioCardia’s suit against the nineteen former nVision Medical Corporation (“nVision”) shareholders will proceed.

2. Pending Motions

A number of motions have been fully briefed and remain pending for resolution by the Court, including:

- a) Ms. Sarna’s Opposed Motion to Dismiss BioCardia, Inc.’s Amended Counterclaim (Dkt. 47, 54, 55, 58);
- b) Ms. Sarna’s Unopposed Motion to Strike Portions of BioCardia, Inc.’s Amended Counterclaim (Dkt. 48, 56);
- c) BioCardia’s Opposed Motion to Amend Scheduling Order and For Leave to File Second Amended Answer to Complaint and Counterclaims (Dkt. 60, 62, 63, 67, 68);
- d) Faegre Drinker Biddle & Reath LLP’s Unopposed Motion for Order Permitting Withdrawal and Substitution of Counsel for Fortis (Dkt. 75); and

e) Scheduled for hearing July 16 ,2020: BioCardia’s Opposed Motion to Consolidate and Set Schedule for Consolidated Cases (Dkt. 76 and 78-81).

f) Scheduled for hearing July 16, 2010: EXXclaim Capital Partners I, LP’s Motion to Dismiss, or in the Alternative, to Strike Portions of BioCardia, Inc.’s First Amended Complaint (Case No. 3:20-cv-02829, Dkt. 43, 49, 53).

3. **Discovery**

The parties have served and answered written discovery requests and have begun producing documents. The parties are engaged in ongoing discussions regarding the sufficiency of the discovery responses and document productions that have occurred thus far, but there are no current discovery disputes that are ripe for resolution by the Court.

When the COVID-19 pandemic hit, the parties were less than a week away from the deposition of Dr. Peter Altman and were in the process of scheduling the deposition of Ms. Surbhi Sarna to occur a few weeks later. These two depositions are likely to be the two most important depositions in the case, and the parties agree that they would prefer to take these depositions in person. Therefore, these depositions have not yet occurred. The parties do agree that, given the current circumstances, some or all of the other depositions in this case may need to occur remotely. No depositions have yet occurred, but the parties anticipate working cooperatively to schedule all necessary depositions in the coming months as discovery continues to progress.

4. **Scheduling**

The parties propose the following dates for designation of experts, discovery cutoff, hearing of dispositive motions, pretrial conference and trial:

Fact Discovery Cutoff	Friday, February 26, 2021
Opening Expert Reports for Party with Burden of Proof	Thursday, March 25, 2021
Opposing Expert Reports	Thursday, May 6, 2021
Reply Expert Reports	Thursday, May 27, 2021
Expert Discovery Cutoff	Thursday, June 24, 2021
Hearing of Dispositive Motions	Thursday, October 21, 2021

Pretrial Conference

Monday, January 17, 2022

First Day of Trial

Monday, February 14, 2022

BioCardia and nVision propose the same schedule in the nVision Case.

The parties recognize that their proposed trial date is beyond the date typically scheduled, but seek their proposed trial date due to some unusual circumstances surrounding this filing. First, this case is related to the nVision Case, and BioCardia has a pending opposed motion to consolidate this case with the nVision Case. There are unresolved issues involving how the claims in the two separate cases can be combined with BioCardia's differing allegations regarding the relationship between Boston Scientific Corporation and nVision Medical Corporation. There are a number of other motions also pending, as noted above, which will affect the scope of discovery, including Ms. Sarna's Motion to Dismiss (Dkt. 47, 54, 55, 58);) and BioCardia's Motion for Leave to Amend (Dkt. 60, 62, 63, 67, 68).

Second, the COVID-19 pandemic is expected to continue to hamper the parties' ability to take discovery, including depositions which all parties agree should be done in person in this case. The parties are prepared to move ahead with some remote depositions, but jointly prefer to take certain key depositions in person.

Third, whether or not this case is consolidated with the nVision Case, the parties agree that discovery will be used in both cases. The parties also agree to work together to minimize the number of times individual witnesses may need to sit for deposition, though given the number of defendants who may be interested in asking questions of BioCardia witnesses, some BioCardia witnesses may need to sit for multiple depositions and/or depositions that last for more than the typical 7 hours.

Fourth, as the pending motions indicate, this is a complex case involving patent, trade secret, and breach of contract issues, as well as other novel issues of law, and discovery requires coordination between multiple parties.

5. Settlement and ADR

The parties held a mediation before Judge Edward Infante, Retired, of JAMS on January 21, 2020. The parties have continued to discuss settlement both directly and through Judge Infante,

1 with the last settlement discussions through Judge Infante taking place in May 2020, after the
 2 complaint in the nVision Case had been filed. The parties agree that their ADR obligations have
 3 already been satisfied and that no further formal mediation is likely to be productive at this time.
 4 The parties anticipate that there will be further efforts at settlement as this and the nVision Case
 5 progress.

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9 Dated: July 1, 2020

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1 Dated: July 1, 2020

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10 Dated: July 1, 2020

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SIGNATURE ATTESTATION

20 Pursuant to Civil L.R. 5-1(i), I hereby attest that all other signatories listed, and on whose
21 behalf the filing is submitted, concur in this document's content and have authorized the filing of
22 this document with the use of their electronic signature.

23 July 1, 2020

/s/ Ian N. Feinberg